

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS PETER WICKER,

Defendant-Appellant.

UNPUBLISHED

May 15, 2001

No. 216969

Saginaw Circuit Court

LC No. 98-015657-FC

Before: Holbrook, Jr., P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.305, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced, as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to two years' imprisonment for the felony-firearm conviction and life imprisonment for the assault conviction. Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court erred in failing to instruct the jury regarding the name of the complainant and the date of the offense, thereby depriving him of the right to a unanimous verdict. We disagree. Defendant waived review of this issue by failing to object at trial. *People v Snider*, 239 Mich App 393, 420; 608 NW2d 502 (2000). Reversal of a conviction based on plain, forfeited error is warranted only when it results in the conviction of an actually innocent defendant or when error affects the integrity of the judicial proceedings. *People v Carines*, 460 Mich 750, 763-767; 597 NW2d 130 (1999). The defendant bears the burden of persuasion with respect to prejudice. *Id.* Defendant has failed to meet his burden. In any event, the general unanimity instruction was sufficient where there was no juror confusion. See *People v Cooks*, 446 Mich 503, 512-513; 521 NW2d 275 (1994). The testimony at trial by Robert Mason established that he was not an intended victim, and the prosecutor emphasized throughout his closing argument that the victim of the assaultive offense was Anthony Thomas. Furthermore, defendant did not take issue with the date of the offense and, in fact, presented an alibi for the date alleged by the prosecution. Accordingly, defendant's claim is without merit.

Defendant next argues that he was denied the effective assistance of counsel based on deficient performance and the failure to interview witnesses. We disagree. To establish a claim of ineffective assistance of counsel, defendant must demonstrate that his attorney's representation

fell below an objective standard of reasonableness and the representation was so prejudicial that defendant was denied a fair trial. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). Defendant must demonstrate that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *Id.* at 302-303. At the *Ginther*¹ hearing held below in conjunction with defendant's motion for new trial, the trial court concluded that defendant was not deprived of a defense and the testimony of an additional witness was "incredulous." Based on the record available, defendant has failed to meet his burden of proof.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Harold Hood

/s/ Richard Allen Griffin

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).